

PROFESSIONAL SERVICES CONTRACT

This Contract ("Contract"), entered into by and between Legislative Services Agency ("LSA") and _____ ("Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Duties of Contractor

The Contractor shall provide the following services relative to this Contract:

2. Consideration

3. Term

4. Access to Records

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract and for three (3) years from the date of final payment under this Contract, for inspection by LSA or its authorized designees. Copies shall be furnished at no cost to LSA if requested.

5. Assignment; Successors

The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign the whole or any part of this Contract without LSA's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of LSA, provided that the Contractor gives written notice (including evidence of such assignment) to LSA thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

6. Audits

The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, *et seq.*, and audit guidelines specified by the State.

7. Authority to Bind Contractor

The signatory for the Contractor represents that he/she has been duly authorized to execute this

Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by LSA.

8. Changes in Work

The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by LSA. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may be amended, supplemented or modified only by a written document executed in the same manner as this Contract.

9. Compliance with Laws

A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by LSA and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC 4-2-6, *et seq.*, IC 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, LSA may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify LSA of any such actions. During the term of such actions, the Contractor agrees that LSA may delay, withhold, or deny work under any supplement, amendment, change order or other contractual

device issued pursuant to this Contract.

E. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for LSA. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination.

F. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

10. Condition of Payment

All services provided by the Contractor under this Contract must be performed to LSA's reasonable satisfaction, as determined at the discretion of the undersigned LSA representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. LSA shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

11. Confidentiality of State Information

The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to or discussed with third parties without the prior written consent of LSA.

The parties acknowledge that the services to be performed by Contractor for LSA under this contract may require or allow access to data, materials, and information containing Social Security numbers maintained by LSA in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and LSA agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

12. Debarment and Suspension

A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term principal for

purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify LSA if any subcontractor becomes debarred or suspended, and shall, at LSA's request, take all steps required by LSA to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

13. Default by LSA

If LSA, within sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination.

14. Disputes

Should any disputes arise with respect to this Contract, the Contractor and LSA agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes. Any party aggrieved with a determination with respect to this contract shall have the remedies set forth in IC 5-22-19.

15. Drug-Free Workplace Certification

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to LSA within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years. Contractor hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the certification set forth herein. The Contractor certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free

workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

D. Notifying LSA in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above or otherwise receiving actual notice of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

16. Employment Eligibility Verification

The Contractor affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

The Contractor shall require his/her/its subcontractors, who perform work under this contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

LSA may terminate the Contract for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by LSA.

17. Force Majeure

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

18. Funding Cancellation

When the Director of the State Budget Agency ("SBA") makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of the SBA that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

19. Governing Laws

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana, and suit, if any, must be brought in the State of Indiana, County of Marion.

20. Indemnification

The Contractor agrees to indemnify, defend, and hold harmless LSA, its agents, officials, and employees from all claims and suits, including court costs, attorney's fees, and other expenses, caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract.

21. Independent Contractor

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

22. Insurance

A. The Contractor shall secure and keep in force during the term of this Contract, the following insurance coverage, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by LSA. LSA and the State are to be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
2. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned LSA representative a certificate of insurance prior to the commencement of this Contract and proof of Workers Compensation coverage meeting all statutory requirements of IC 22-3-2.

B. The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
3. LSA will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify LSA under this Contract shall not be limited by the insurance required in this Contract.
4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to LSA.

Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling LSA to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to LSA before the commencement of this Contract.

23. Licensing Standards

The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. LSA will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify LSA immediately and LSA, at its option, may immediately terminate this Contract.

24. Merger & Modification This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

25. Nondiscrimination

Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

26. Notice to Parties Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to LSA shall be sent to:
Bob Amos

B. Notices to the Contractor shall be sent to:

C. As required by IC 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with LSA.

27. Order of Precedence; Incorporation by Reference

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the

following order: (1) This Contract and any provisions incorporated therein, (2) attachments prepared by LSA, (3) the RFP, (4) Contractor's response to the RFP, and (5) attachments prepared by the Contractor. All of the foregoing are incorporated fully by reference. All attachments and all documents referred to in this paragraph are hereby incorporated fully by reference.

28. Ownership of Documents and Materials

All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to execution of this Contract but specifically developed under this Contract shall be considered work for hire and the Contractor transfers any ownership claim to LSA and all such materials will be the property of LSA. Use of these materials, other than those related to contract performance by the Contractor, without the prior written consent of LSA, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by LSA and used to develop or assist in the services provided while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide LSA full, immediate, and unrestricted access to the work product during the term of this Contract.

29. Payments

All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.

30. Penalties/Interest/Attorney's Fees

LSA will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

31. Progress Reports

The Contractor shall submit progress reports to LSA upon request. The report shall be in writing, unless LSA deems an oral report to be sufficient. The progress reports shall serve the purpose of assuring LSA that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

32. Severability

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

33. Substantial Performance

This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

34. Taxes

LSA is exempt from most state and local taxes and many federal taxes. LSA will not be responsible for any taxes levied on the Contractor as a result of this Contract.

35. Termination for Default

A. With the provision of thirty (30) days notice to the Contractor, LSA may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if LSA determines progress is being made and the extension is agreed to by the parties;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

B. If LSA terminates this Contract in whole or in part, it may acquire, under the terms and in the manner LSA considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to LSA for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. LSA shall pay the contract price for completed supplies delivered and services accepted. The Contractor and LSA shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. LSA may withhold from these amounts any sum LSA determines to be necessary to protect LSA against loss because of outstanding liens or claims of former lien holders.

The rights and remedies of LSA in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

36. Travel

No expenses for travel will be reimbursed unless specifically permitted by this Contract. Expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by LSA for availability of funds and for appropriateness per Circular guidelines.

37. Waiver of Rights

No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither LSA's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to LSA in accordance with applicable law for all damages to LSA caused by the Contractor's negligent performance of any of the services furnished under this Contract.

38. Work Standards

The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If LSA becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, LSA may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

39. Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

In Witness Whereof, Contractor and LSA have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

Contractor:

By:

Printed Name:

Title:

Date:

LSA:

By:

Printed Name:

Title:

Date: